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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

GARY PIERCE-CHAIRMAN  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

SEP 28 2012

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In the matter of:

Docket No. S-20823A-11-0407

THOMAS LAURENCE HAMPTON,  
CRD #2470192, and STEPHANIE YAGER,  
husband and wife,

TIMOTHY D. MORAN, CRD # 2326078, and  
PATRICIA MORAN, husband and wife,

PATRICK MORAN, CRD # 1496354, and  
KELLY MORAN, husband and wife,

HAMPTON CAPITAL MARKETS, LLC, an  
Arizona limited liability company,

Respondents.

RESPONDENTS TIMOTHY D.  
MORAN AND PATRICIA MORAN'S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS

Respondents Timothy D. Moran ("Mr. Moran") and Patricia Moran respectfully reply in support of their motion to dismiss. The Division does not deny that the Commission's motion to dismiss rule applies to this case, nor that the Commission must comply with this rule. In addition, the Division agrees that the Administrative Law Judge may order them to provide more detailed allegations.<sup>1</sup>

The Division argues that it need not provide any details regarding the charges it is bringing against Mr. Timothy Moran. The Division cites A.A.C. R14-4-306 for this proposition. This rule allows the Commission – not the Division – to issue a notice of opportunity (similar to the practice of the Commission to issue an Order to Show Cause in utility cases). Notably, other provisions of the same article (R14-4-301 et seq) specifically refer to the Division or the Director. See e.g. R14-4-303(B); R14-4-303(H)(1); R14-4-304(C). Moreover, even if R14-4-306 allowed the Division to issue a notice of opportunity, it does not specify a pleading standard, it merely states that "The

<sup>1</sup> Division Response to Motion to Dismiss, at p. 5, lines 12-22.

Commission may issue a notice of opportunity....”<sup>2</sup>

Rather, the rule governing pleading standards at the Commission is A.A.C. R14-3-106(L). That rule provides that “Complaints shall be in writing and shall... a **complete statement of the grounds** for said complaint, **indicating the date or dates** of the commission or omission of the acts or things complained of, and the nature of the relief sought by the complainant.” A.A.C. R14-3-106(L)(emphasis added). There can be no doubt that the notice of opportunity does not comply with this rule. It does not allege the commission or omission of any specific offers or sales by Mr. Timothy Moran, much less providing the dates of those acts.

The Division also cites to the Arizona Administrative Procedure Act, specifically A.R.S. § 41-1061(B)(4). As initial matter, the Commission has the authority to impose a higher pleading standard on itself than set forth in the Act, and as described above it has done so by requiring a “complete statement of the grounds” for a complaint including the “date or dates of the commission or omission of the acts or things complained of...” A.A.C. R14-3-106(L). But even if the lower standard of the Act applies, the notice of opportunity fails this lower test as well.

Tellingly, when the Division Response quotes A.R.S. § 41-1061(B)(4), it failed to include the last sentence. The full subsection states that a notice of opportunity must contain:

A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

A.R.S. §41-1061(B)(4). A motion to dismiss is the traditional way of seeking a “more definite and detailed statement”, typically a Plaintiff has the opportunity to seek leave to re-plead the complaint if they believe the claim can be salvaged. Here, the Division may file a more adequate notice if it

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<sup>2</sup> We do not contend that the Division may not issue notices of opportunity; merely that this specific rule does not provide them with that power, and therefore that this specific rule does not apply.

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1 believes it can satisfy the standard set forth in A.A.C. R14-3-106(L).<sup>3</sup> Further, the last sentence of  
2 A.R.S. §41-1061(B)(4) is mandatory, "... a more definite and detailed statement shall be  
3 furnished." (emphasis added).

4 More fundamentally, it is simply fair that Mr. Timothy Moran be told more about the  
5 charges the Division is bringing against him. The Notice does not specifically allege that Mr.  
6 Timothy Moran offered or sold any specific securities; it only makes a generic allegation that  
7 "Respondents" offered and sold. As it stands, Mr. Timothy Moran does not know whether the  
8 Division is contending that he "offered" securities, or "sold" them, or both or neither. Nor does he  
9 know who the Division alleges the offer or sale was made to, or when it was made. If Mr. Timothy  
10 Moran is to have a fair opportunity to defend himself from the Division's charges, the Division  
11 should be required to provide this information.

12 Accordingly, Timothy and Patricia Moran request that the Commission order that the  
13 Notice be dismissed (as to Timothy and Patricia Moran), or in the alternative, that the Division be  
14 required to file an Amended Notice providing the additional information.

15 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of September, 2012.

16 ROSHKA DeWULF & PATTEN, PLC

17  
18 By   
19

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27 *Attorneys for Respondents*  
*Timothy D. and Patricia Moran*

<sup>3</sup> The Division's response asserts that the Motion to Dismiss seeks dismissal with prejudice. That was not the intent of the motion, and it does not contain the words "with prejudice".

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1 ORIGINAL and thirteen copies of the foregoing  
2 filed this 28<sup>th</sup> day of September, 2012 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered  
8 this 28<sup>th</sup> day of September, 2012 to:

9 Marc E. Stern, Administrative Law Judge  
10 Hearing Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Phong (Paul) Huynh, Esq.  
15 Securities Division  
16 Arizona Corporation Commission  
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19 Copy of the foregoing mailed  
20 this 27<sup>th</sup> day of September, 2012 to:

21 Thomas Hampton and Stephanie Yager  
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By 